

STATE RESPONSIBILITY FOR THE RIGHTS OF REFUGEES

A Critical Analysis on the Security of Refugees in Uganda



Candidate number: 10

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Deadline for Submission: September 01, 2009

Number of words: 18,000 (18.000)

01.09.2009

UNIVERSITY OF OSLO

Faculty of Law

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Acknowledgements

Writing this thesis was successful because of the assistance rendered to me by my supervisor, Professor Cecilia Baillet. I would like to thank her for her valuable comments, provision of relevant articles, literature and her continuous encouragement and support to me. I am also grateful to the librarians at the Department of Public International law for their support. I thank my family for the words of wisdom and encouragement.

Dedication

This work is dedicated to the refugees in Uganda

Acronyms

ACHPR	African Charter on Human and People's Rights
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of All forms of Racial Discrimination Against Women
CRC	Convention on the Rights of a Child
Excom	Executive Committee
GA	General Assembly
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
LRA	Lord's Resistance Army
OAU	Organisation of African Unity
PCA	Penal Code Act
PCIJ	Permanent Court of International Justice
SGBV	Sexual and Gender Based Violence
SPLA	Sudan People's Liberation Army
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCR	United Nations High Commission for Refugees
VCLT	Vienna Convention on the Law of Treaties

CHAPTER ONE

1.1 INTRODUCTION

Refugees are a vulnerable people uprooted from their environment by circumstances which are beyond their control. They lose their ability to sustain themselves for a remarkably long period of time.¹ As a result, they become politically, economically and socially disempowered making it difficult for them to use their own resources. The underlying factor in the movement of refugees is the escape from danger to find a safe haven. These uprooted people have expectations to continue their normal life in a new environment in dignity, and to be accorded equal treatment with the rest of the community to which they migrate to. Refugees are an issue of global concern due to the various problems affecting their livelihood. Security is one of the key issues affecting refugees in Uganda. Security has not only affected refugees but also internally displaced persons however due to limitation of time and space; this paper shall only focus on the security of refugees.

Persons flee their country and seek protection as refugees' in order to survive in safety and dignity. The immediate objective of international protection of refugees is therefore to ensure their physical safety and security.

Security refers to the freedom from the threat of violence, coercion or deliberate deprivation. A person's perception of the risks they face is what determines whether or not they feel secure.²

This thesis will show the constraints to the enjoyment of the physical and legal security of refugees by clearly analysing what has hindered security in most of the settlements. It will, however, also explore the extent to which refugees are actually able to enjoy physical and legal security.

¹ Goran Rystad, Introduction in the Uprooted. Forced Migration as an International Problem in the Post War Era.(1990)

² ODI/HPG Discussion Paper on Humanitarian Protection and Politics of Influence. A Study of Concepts and Practice in the Protection of Civilians.(25th June 2004)

1.2. HISTORICAL OVERVIEW

Uganda has been and continues to be an epicenter for refugees located within the geographical centre of a region characterised by conflicts and instability. As early as the Second World War, events in Uganda have been inextricably linked to the numerous issues surrounding the presence and creation of varying numbers of refugees.³

Uganda's experience dates back to the Second World War when it played host to many Europeans displaced by the war especially the polish refugees fleeing the devastations of World War II. The next wave came in 1955 as a result of the Anglo-Egyptian struggle over the Sudan. Soon after, Kenyans fled the Mau Mau struggles into Uganda. The Sudanese also fled in large numbers as a result of post- independence conflicts and the Sudanese Peoples Liberation Army (SPLA) struggle in southern Sudan displaced the highest number of refugees in Uganda.⁴ Similarly, the liberation wars that covered most of southern Africa led to the fleeing of many refugees from countries such as South Africa, Rhodesia (now Zimbabwe) and Mozambique.⁵ More recently, the Rwandan genocide in 1994 forced thousands of Rwandese into exile in Uganda and, the decade long conflict in the Democratic Republic of Congo, involving not only the kinshasha government and various Congolese rebels, but also a whole range of regional governments have caused further heavy inflows of Congolese refugees into Uganda.

Most of the refugees are persons fleeing from the problems of political repression, wars, armed conflicts and other human rights abuses.⁶ They are settled in different parts of the country ranging from the North, West and East however, this paper shall mainly concentrate on the refugees in the northern part of the country who have suffered most from insecurity.

³ Louise Pirout, Refugees in and from Uganda in the Post Colonial Period. (Heinemann, Nairobi 1988)

⁴ Louise Pirout ,Refugees in and from Uganda in the Post Colonial Period .(Heinemann, Nairobi 1988)

⁵ Ibid

⁶ Human rights watch and other international organisations have documented the problems of political repression, armed conflicts and other humanrights abuses as causes of refugee flight.

Today, Uganda hosts an officially registered refugee population of just under 220,000 refugees of whom approximately 78% are Sudanese, 11% are Congolese and 7.5% are Rwandese. The remaining 3.5% is made up of refugees from a variety of African countries including Burundi, Somalia, Eritrea, Ethiopia, Kenya, and Liberia.

1.3. WHO IS A REFUGEE?

The 1951 Convention Relating to the Status of Refugees and the 1967 Protocol define a refugee as a person owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection of that country or who not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or owing to such fear is unwilling to return to it.⁷

The 1969 OAU Convention Governing Specific Aspects Refugee Problems in Africa expands on the definition to include any person owing to external aggression, occupation, foreign domination or events seriously affecting public order in any part or whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.⁸

The 2006 Refugee Act of Uganda defines a refugee as a person owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection of that country or who not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or owing to such fear is unwilling to return to it. A refugee also includes any person owing to external aggression, occupation, foreign domination or events' seriously affecting public order in any part or whole of his country of origin or

⁷ 1951 Convention Relating to the Status of Refugees. Art.1 (2)

⁸ 1969 OAU Convention Governing Specific Refugee Problems in Africa. Art.1 (2)

nationality is compelled to leave his place of habitual residence in order to seek refugee in another place outside his country of origin or nationality.⁹

1.4. RESPONSIBILITY FOR SECURITY OF REFUGEES

The responsibility for security is vested in the sovereign state. The presumption is that refugee protection in terms of physical and legal security must be the responsibility of the host state. State responsibility entails the obligation of a state to ensure the safety of refugees in accordance with international standards. The International Court of Justice has recognized that obligations of states could be based on so called elementary considerations of humanity¹⁰ and that on another it held that certain obligations were owed by the state towards the international community as a whole.¹¹ Every internationally wrongful act of a state entails the international responsibility of that state.¹² It is a principle of international law that a breach of an engagement creates an obligation to make reparation in an adequate form¹³. The state shall be responsible if it is proved that there was a breach of an obligation by the state under international law.¹⁴ State responsibility may occur directly from acts and omissions of government officials and agents or indirectly where the domestic legal and administrative systems fail to guarantee the observance of international standards whether the obligation to observe those standards rests on treaty, custom or some other basis.¹⁵ Safeguarding the personal security of refugees is fundamental to international protection. The state has a duty to respect and protect the rights of individuals under their territory or subject to their jurisdiction.

⁹ 2006 Refugee Act. Art. (1)

¹⁰ Corfu channel case(Uk v Albania),ICJ Reports, (1949)

¹¹ ICJ Barcelona Traction case (second phase), ICJ Reports 1970.

¹² Draft Articles on State Responsibility. Art.1

¹³ Germany Vs Poland, Chorzow factory Case PCIJ, Series A No. 17, (1928)

¹⁴ Draft Articles on State Responsibility. Art.2

¹⁵ Ian Brownlie, Principles of Public International Law.(5th edition, oxford 1998)

As a general principle of international law, every treaty in force is binding upon the parties to it and must be performed in good faith.¹⁶ Since, Uganda has ratified the refugee convention; it has an obligation under international and national law to protect refugees.

It is worth- noting that the security of refugees also rests on the United Nations High Commissioner for Refugees. It is the international organization endowed with the mandate to ensure the protection of refugees.

This paper shall therefore point out the need for cooperation between the state and UNHCR for promoting the physical and legal security of refugees.

The statute of the UNHCR empowers the organization with the primary function of providing international protection to refugees. The UNHCR acting under the authority of the General Assembly shall assume the function of providing international protection under the auspices of the UN and seeking permanent solutions for the problems by assisting Governments.¹⁷ The High Commissioner shall provide for the protection of refugees by promoting through special agreements with the Governments the execution of any measures calculated to improve the situation of refugees and reduce the number requiring assistance.¹⁸ This therefore shows that security for refugees requires joint cooperation between the state and UNHCR.

Contracting states are therefore required to cooperate with the office of the UNHCR or any other agency of the UN which may succeed it in the exercise of its function and shall in particular facilitate its duty of supervising the provisions of the convention. The contracting state therefore undertakes to provide them in the appropriate form with information and statistical data requested concerning the conditions of refugees, implementation of the convention, laws and regulations in force relating to refugees¹⁹. The OAU convention also requires member states to cooperate with the office of the UNHCR.

¹⁶ Vienna Convention on the Law of Treaties. Art.26

¹⁷ Statute of the UNHCR. Paragraph 1.

¹⁸ Statute of the UNHCR. Paragraph. 8(b)

¹⁹ Statute of the UNHCR. Paragraph. 8(F)

The General Assembly entrusted the UNHCR with providing international protection to and seeking durable solutions for all refugees and this mandate is not restricted by international obligations assumed by a particular state.

This in essence means that responsibility for the security of refugees requires a joint effort between the state and UNHCR. However, the primary responsibility rests on the state which needs to cooperate with UNHCR to meet international standards.

The responsibility for security also rests on the refugees themselves. This discussion would be incomplete if it did not underline the responsibility of refugees themselves. Refugees are liable for acts of violence whether perpetrated upon nationals or fellow refugees under the laws of the host country. Every refugee has duties to the country in which he finds himself which require in particular he conforms to its laws and regulations as well as to measures taken for the maintenance of public order.

Maintaining the purely civilian and humanitarian character of refugee camps and settlements is essential for effective protection of refugees including safeguarding their personal security. Refugees have a responsibility to cooperate with measures to this end and to abstain from any activity likely to destruct from the exclusively civilian and humanitarian character of camps and settlements.

Given the understanding that the grant of asylum is a peaceful and humanitarian act and not to be regarded as an unfriendly act by any state and in view of the entirely non political and humanitarian character of the High Commissioners mandate, persons who qualify as refugees cannot expect international protection or assistance as refugees while they continue to bear arms and participate in military or armed activity.

1.5. OBJECTIVES AND STRUCTURE OF THIS PAPER

This thesis will point out the need for physical and legal security as a fundamental right that accrues to refugees while highlighting on the state obligation to take all necessary measures to ensure the safety of refugees. The paper will also point out the need for the state to co-operate with UNHCR for purposes of ensuring the safety of refugees' in order to meet international standards.

This paper shall be divided into five chapters. Chapter 1 focuses on an introduction, history of refugees, where most of the refugees emanate from, causes of refugee flight, who refugees are. It will analyze the meaning of security, state responsibility and refugee responsibility. The methodology and sources of law is understood to fall under this chapter. Chapter 2 will consider security as a human right; consider human rights instruments that provide for security and whether the state has lived up to the expectations of those instruments. Chapter 3 will deal with the meaning of physical and legal security, causes of insecurity in most of the settlements showing the various kinds of security threats and the responsibility of the state under international refugee law and national law. It will assess whether the state has failed to implement the existing law. Chapter 4 will deal with the loopholes in the law which may affect the responsibility of the state. The chapter will explore whether the laws on refugee protection do not expressly provide for the security of refugees. Chapter 5 will offer recommendations to the problem of security.

1.6. METHODOLOGY AND SOURCES

The method to be used shall be a normative approach. Informal interviews, discussions, preliminary consultations will be relied on.

Legal sources shall be relied on for example, conventions, resolutions, general comments, reports, case law, and judicial decisions. Secondary literature including books, articles, journals, reports, electronic sources will be used.

CHAPTER 2

2.1. SECURITY AS A HUMAN RIGHT

There is a close relationship between the legal concept of refugees and human rights. The refugee concept is an international humanitarian one concerned with safety and protection of people who under the 1951 convention are forced out of their country of habitual abode because of fear of persecution, war or break down of public order. The refugee concept thus relates to a person in flight who seeks to escape conditions or personal circumstances found to be intolerable.²⁰ The protection of refugees under international law arises out of a profound desire to enable them continue enjoying certain fundamental rights in the country of asylum.

While the 1951 Convention continues to be the most commonly relied upon and most specific international instrument regarding the rights of refugees and more specifically the integration rights of recognized refugees, international human rights law offers an increasingly important complement to the convention.

Asylum seekers and refugees are entitled to all the rights and fundamental freedoms that are spelled out in international human rights instruments. The protection of refugees should therefore be seen in the broader context of the protection of human rights. Human rights law obliges all states to ensure the physical safety of all persons within their jurisdiction and refugees regardless of where they find themselves are entitled to respect for security of person.

Refugees as a group are the most endangered people in the world. Most of their basic human rights are threatened during flight and upon their relocation in the camps in the sanctuary state and finally during their return to their countries of origin or nationality. Gil Loescher describes vividly the plight of refugees in the sanctuary states in these words;

“Many are confined to camps or ramshackle settlements close to the borders of their home countries where they are deprived of opportunities to work or farm their own land; they depend on international charity for survival. Refugees are often exposed to dangers of

²⁰ Guy S. Goodwin Gill. *The Refugee in International Law* (1983)

armed attacks, subjected to many forms of exploitation and degradation and haunted by constant fear of expulsion and the forced return to their countries of origin.”²¹

2.1.a. Security as a right under International and Regional Human Rights Law.

Security is a right under human rights law and therefore the fact that refugees are human beings, they are entitled to enjoyment of the right. The inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. If a man is not compelled to have recourse as a last resort to rebellion against tyranny and oppression, then human rights should be protected by the rule of law.²²

Rights under the international covenant on civil and political rights apply not only to citizens but equally to asylum seekers and refugees.²³ The Human Rights Committee has held that the general rule is that each one of the rights must be guaranteed without discrimination between citizens and aliens.²⁴ It further stated that in general, the rights set forth in the covenant apply to everyone irrespective of reciprocity, nationality or statelessness. The Human Rights Committee has more recently clarified that the enjoyment of covenant rights is not limited to citizens of state parties but must also be available to all individuals regardless of nationality or statelessness such as asylum seekers and refugees and other persons who may find themselves in the territory or subject to the jurisdiction of the state party.²⁵ It is worth noting that although refugees are foreigners in the country of asylum, by virtue of ICCPR, they enjoy the same fundamental rights and freedoms as nationals. The right of equality before the law, equal protection of the law and non discrimination which form the cornerstone of international human rights law appear to ban discrimination against refugees. The ICCPR provides that state parties to it under take the necessary steps in accordance with its constitutional process and with the provisions of the

²¹ Gil Loescher. *Refugee Issues in International Relations*. (Oxford 1989) pp 1-2.

²² Preamble of the Universal Declaration on Human Rights.

²³ International Covenant on Civil and Political Rights. Art.2 (1)

²⁴ Human Rights Committee, General comment No.15 on the Position of Aliens. (1986) paragraphs 1 and 2.

²⁵ Ibid.

covenant to adopt such legislative measures or other measures as may be necessary to give effect to the rights in the covenant.²⁶

The African Charter on Human and Peoples rights states that all individuals are entitled to the enjoyment of rights and freedoms guaranteed in the charter without distinction of any kind such as race, religion, ethnic group, color, sex, language, political opinion or any other status.²⁷ Every individual shall have the right to respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly torture, cruel, inhuman or degrading punishment or treatment are prohibited.²⁸ All persons are equal and shall enjoy the same respect and have the same rights. Nothing shall justify the domination of a people by another. Every individual shall have the right to liberty and security of person.²⁹

2.1.b. Security as a right under National Law

The constitution of the republic of Uganda recognizes the importance of human rights and requires the state to ensure that rights of human beings are respected and protected at all times. It states that fundamental rights and freedoms of individuals are inherent and not granted by the state.³⁰ This therefore means that the mere fact that one exists as a human being, he/she is entitled to the enjoyment of fundamental rights and freedoms. It further states that all persons are equal before and under the law in all spheres of political, social and cultural life and in every other respect and shall enjoy equal protection of the law.³¹

The state is therefore under an obligation to ensure that all persons under their jurisdiction enjoy the right to security. Refugees are thus entitled to physical and legal security under human rights law.

²⁶ International Covenant on Civil and Political Rights. Art.2 (2)

²⁷ African Charter on Human and Peoples Rights. Art.2

²⁸ African Charter on Human and Peoples Rights. Art.5

²⁹ African Charter on Human and Peoples Rights. Art.6

³⁰ Constitution of the Republic of Uganda.Art20(1)

³¹ Constitution of the Republic of Uganda.Art21(1)

2.2. SECURITY AS AN EXPANSION ON THE PROHIBITION OF TORTURE, CRUEL, INHUMAN, DEGRADING PUNISHMENT OR TREATMENT

The human rights regime guaranteeing freedom from torture, cruel, inhuman, degrading punishment or treatment is of paramount importance to refugees who may be compelled to suffer violence or ill treatment during flight and upon their relocation in camps.³² Refugees like other persons are entitled to be treated with humanity and respect for the human dignity of the human person.³³ Security is an expansion on the prohibition of torture, cruel, inhuman, degrading punishment or treatment. When refugees are subjected to torture, it's an indication that they are not safe in the countries of asylum. The state is under an obligation to ensure the protection of refugees from all acts that hinder the enjoyment of their physical and legal security. The Convention against Torture and other cruel, inhuman or degrading treatment or punishment requires each state party to take effective legislative, administrative, judicial or other measures to prevent torture in any territory under its jurisdiction.³⁴

The enjoyment of security as a right is based on the protection of refugees from all sorts of torture, cruel, inhuman, degrading punishment or treatment. This thesis will point out the need for the state to ensure the protection of refugees from all forms of torture. Torture and cruel treatment can be in form of arbitrary arrests, detention, beatings, harassments by officials, forced return to the countries of asylum, sexual exploitation especially on the part of women and girls.

Refugees have been victims of torture and inhuman treatment through the increased arrests and detentions. This is mainly because of the lack of proper documentation. When most of the refugees arrive in the country, they are not aware of the status determination process and the whole procedure to acquire the relevant proper documentation and because of that, most of them are subject to arrests and detention.

³² Universal Declaration of Human Rights. Art.5

³³ International Covenant on Civil and Political Rights. Art.10 (1)

³⁴ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Art.2 (1)

The ICCPR guarantees the right not to be arbitrary arrested and detained.³⁵ Similarly, the UDHR prohibits arbitrary arrests, detention and exile.³⁶

The UNHCR Guidelines on detention of asylum seekers reaffirmed the general principle that asylum seekers should not be detained.³⁷ Detention can only be resorted to after a full consideration of all possible alternatives or when monitoring mechanisms have been demonstrated not to have achieved the lawful and legitimate purpose. Human rights bodies have similarly emphasized that the detention of asylum seekers should only occur as a measure of last resort after other non custodial alternatives have proven or deemed insufficient in relation to the individual.³⁸ In the case of *A v Australia*, the HRC confirmed that it is not per se arbitrary to detain individuals seeking asylum nor did the committee find support for any rule of customary international law that would render all such detention arbitrary. Likelihood of absconding and lack of cooperation were specifically cited as reasons that may justify detention in an individual case. The HRC went on to state that without such factors, detention may be considered arbitrary even if entry was illegal.³⁹

The Executive Committee of the High Commissioners program has elaborated grounds upon which detention may be prescribed by law could be necessary in an individual case which include, to verify identity, to determine the elements on which the claim to refugee status or asylum is based, to deal with cases where refugees or asylum seekers have destroyed their travel documents or have fraudulent documents in order to mislead the authorities of the state or to protect national security or public order.⁴⁰

The state has ensured that refugees are informed when they arrive of the formalities and the procedures they have to under go in order to have the proper documentation and avoid

³⁵ International Covenant on Civil and Political Rights. Art.9

³⁶ Universal Declaration of Human Rights. Art.9

³⁷ UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum seekers. 1999.

³⁸ Resolution of the UN Sub Commission on Promotion and Protection of Human rights Regarding Detention of Asylum seekers. 2000/01

³⁹ HRC Case No.560/1993.paragraph 9.

⁴⁰ Executive Committee Conclusion No.44 (1986).

situations of arrests and detention. Instructors are normally sent to the camps to notify most of the refugees of what they are expected to do. This has tried to minimize on the problem of arrest and detention but has not completely solved the problem. This is mainly because at times the instructors take a long time to inform most of the asylum seekers and because of that, many are forced to move without the proper documentation and are therefore subject to arrests and detention. The instructors may some times speak a language that is not universal to all the asylum seekers and as such, many remain unaware of what they are expected to do. This therefore results into the asylum seekers moving without proper documentation and become subjected to arrest. Refugees without proper documentation have been subjected to beatings and harassments. This is mainly because they are at times considered a threat to the security of the state. Most of the officials who humiliate and beat the refugees go unpunished and as such continue to violate the right to security.

The CAT prohibits the use of torture as a policy tool and stipulates that the perpetrators of torture be brought to justice. Although the state has ensured the protection of refugees from acts of arrests and detention, it has not lived up to the expectations of human rights law.

Refugees are at times forced to return to countries where their lives would be threatened or where they are likely to face torture.⁴¹ This can be indirectly when the state fails to sustain the refugees and they resort to return. Some of the refugees are faced with rejection at the frontiers and because of that, they resort to return to countries where they are bound to face torture. The legal basis for the protection against forced return of refugees to countries where they apprehend danger to their lives, safety, security and dignity can be found in the law relating to prohibition of torture and cruel or inhuman treatment. The ICCPR which prohibits torture cruel and inhuman treatment casts a duty on the state parties not to impose individuals to the danger of torture, cruel, inhuman or degrading punishment or treatment upon return to another country by way of extradition, expulsion or refoulement.⁴² The CAT similarly requires state parties not to expel, return or extradite a person to another state

⁴¹ Failure to respect the human rights of refugees in the country of asylum including economic, social, and cultural rights may effectively result in constructive refoulement, the forcible return of persons to a country where they face serious human rights abuses.

⁴² International Covenant on Civil and Political Rights. Art.7

where there are substantial grounds for believing that he would be in danger of being subjected to torture.⁴³ For purposes of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including where applicable, the existence in the state concerned of a consistent pattern of gross, flagrant or mass violations of human rights.⁴⁴ The UN Committee against Torture has considered a number of cases concerning torture for example in the case of *Mutombo v Switzerland*, the convention would have been violated if Switzerland had returned Mutombo to Zaire where there was substantial ground to believe that he was to be subjected to torture.⁴⁵ This therefore means that the state is under an obligation to ensure that persons are not returned to states where their lives and freedom is threatened. The state is still responsible even if the torture occurred outside its territory. Refugees are therefore entitled to protection from all kinds of acts that threaten their physical and legal security.

The Constitution of the Republic of Uganda also prohibits the use of torture as a policy tool and requires the punishment for all those who violate the rights of individuals in the territory. It states that no person shall be subjected to any form of torture or cruel, inhuman or degrading treatment or punishment.⁴⁶ This clearly shows that the use of torture is prohibited and the state is under an obligation to ensure the protection of all individuals within their jurisdiction from all forms of torture and inhuman treatment.

It can thus be noted from the above discussion that security is an expansion on the prohibition of torture, cruel, inhuman and degrading punishment. Where refugees in the state are being subjected to torture, it becomes a violation of the right to the physical and legal security of the individuals. The state is therefore under an obligation to ensure that refugees within the territory are protected from all forms of torture.

⁴³ CAT. Art.3 (1)

The principle of non-refoulement is a well established principle of customary international law which ensures that no one shall be returned to a country where he or she is at a risk of human rights violations.

⁴⁴ Ibid.

⁴⁵ UN Doc. CAT/C/12/D/13/1993.

⁴⁶ Constitution of the Republic of Uganda. Art.24

2.3. SECURITY OF REFUGEES DURING ARMED CONFLICTS

The safety of refugees is very fundamental during armed conflicts whether international or non international. International humanitarian law prohibits violence to the life and person of the civilian including refugees. The state is under an obligation to ensure that during conflicts, refugees are protected from all sorts of violence. The provisions of the Geneva Conventions relating to armed conflicts outlaw wanton acts of violence, murder, torture, mutilation and rape against civilians. The Geneva Convention prohibits violence to the life and person and in particular murder of all kinds, mutilations, cruel treatment, taking of hostages, outrages upon personal dignity and in particular humiliating and degrading treatment.⁴⁷ The Geneva conventions remain the fundamental basis for the protection of the rights of civilians during conflicts. Persons who do not take a direct part or have ceased to take part in hostilities, whether or not their liberty has been restricted are entitled to respect for their person, honor and convictions.⁴⁸ They shall in all circumstances be treated humanly, without any adverse distinction. Since refugees are civilians and not involved in conflicts, the state is under an obligation to ensure that they are protected during armed conflicts. The civilian population and individual civilians are entitled to protection against dangers arising from military operations. They shall not be the object of attack. Acts of violence the primary purpose of which is to spread terror among the civilian population are prohibited. Persons who before the beginning of hostilities were considered stateless or refugees should be protected from all forms of violence.⁴⁹

In its conclusion on the subject of military or armed attacks on refugee camps and settlements, the Executive Committee condemned all violations of the rights and safety of refugees and asylum seekers and in particular military or armed attacks on refugee camps and settlements. It urged states to abstain from these violations which it held are against the principles of international law and therefore cannot be justified. In addition to calling upon

⁴⁷ Common Article to the Geneva Conventions. Art.3

⁴⁸ Protocol Additional to the Geneva Conventions and Relating to the Protection of Victims of Non International Armed Conflicts. Art.4(1)

⁴⁹ Protocol Additional to the Geneva Conventions and Relating to the Protection of Victims of International Armed Conflicts. Art.73

all parties to extend the necessary assistance to relieve the plight of victims of such attacks, the committee also urged states and other parties to ensure that the civilian and humanitarian character of refugee camps and settlements be maintained.

The state has relocated refugees away from the frontier of the borders during conflicts especially during the rebel attacks by LRA however many refugees are usually left in the camps because of the limited resources by the state. The state is not in the position to relocate all the refugees to safe zones because of the limited resources and because of that; many have suffered from the problems of armed conflicts. This has thus left the lives of many refugees at stake and many have been affected by the activities of the rebels. This has led to violations of the rights of the refugees because many have been subjected to torture and sufferings.

2.4. SECURITY OF SPECIFIC GROUPS OF REFUGEES

2.4.a. CHILDREN

This thesis will show the need for the protection of children by the state. Children are a vulnerable group and are entitled the enjoyment of physical and legal security by the state. The state has an obligation under international law to ensure the protection of refugee children from any activities that are likely to hinder their security.

The preamble to the Convention on the Rights of a Child states that in accordance with the principles proclaimed in the UN charter, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.⁵⁰ State parties are required to take all the appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation including sexual abuse.⁵¹ State parties shall take all appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee whether accompanied or un accompanied by his/her parents or any

⁵⁰ Preamble to the Convention on the Rights of a Child.

⁵¹ Convention on the Rights of a Child. Art.19

other person receive appropriate treatment and humanitarian assistance.⁵² Children are to be protected from all forms of sexual exploitation and abuse.⁵³ The state is under the obligation to ensure that children are protected from all forms of exploitation prejudicial to their welfare⁵⁴. Refugee children have been victims of exploitation especially during conflicts when majority are abducted and others are recruited into the army forces and are forced to fight.

The child must be put in a position to earn a livelihood and must be protected against all forms of exploitation.⁵⁵ The child shall be protected from all forms of neglect, cruelty and exploitation.⁵⁶ Children are to be protected by the state during conflicts. State parties are required to respect and ensure respect for rules of international humanitarian law applicable to children during armed conflicts. State parties shall ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.⁵⁷ State parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation and abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment.

The state has ensured the safety of children by moving them away from the borders during conflicts but some are usually left behind and have been victims of abduction. Children have suffered from recruitments and others forced to fight at the battle front. Due to insecurity in the settlements, some of the children are usually forced to leave the settlements and move to town where they are at times harassed by the security officers or arrested and detained. This has affected the lives of many children. The state has therefore not lived up to the expectations of international law.

⁵² Convention on the Rights of a Child. Art.22

⁵³ Convention on the Rights of a Child. Art.34

⁵⁴ Convention on the Rights of a Child. Art.36

⁵⁵ Geneva Declaration on the Rights of a Child.1924 Art.4

⁵⁶ 1959 Declaration on the Rights of a Child Proclaimed by the General Assembly Resolution 1386 of November 20th . Principle 9

⁵⁷ Convention on the Rights of a Child. Art.38 (2)

2.4.b. WOMEN

The majority of refugees in Uganda are women. They are solely responsible for the well being of their families. They are particularly vulnerable to abuse and exploitation including rape by camp officials, police, security personnel, criminals and refugee men. Risk factors in the wider protection environment can arise as a result of and after flight for women and girls and may include problems arising from insecurity and armed conflict threatening or exposing them to SGBV or other forms of violence. Women are under represented in refugee leadership structures and often have less access than men to grievance mechanisms and the law.

This thesis will show the extent to which the state has ensured the protection of such a vulnerable group of refugees and point out the responsibility of the state under the different international instruments.

Violence is any act of violence which creates or threatens to create physical, sexual or psychological harm to women or girls whether occurring in public or private. Violence against women is a form of gender based violence and includes sexual violence. The UN Declaration on the Elimination of violence against women states that violence against women is manifestation of historically unequal power relations between men and women which has led to the domination and discrimination against women by men.⁵⁸ The UNHCR Code of conduct states that all refugees and asylum seekers should be treated fairly with respect and dignity.⁵⁹ States are required to prevent, oppose and combat all exploitation and abuse of refugees and other persons of concern.⁶⁰

The state has an obligation under several human rights instruments to adopt measures directed towards the elimination of violence against women a category that encompasses refugee women. Violence against women prevents and nullifies the exercise of civil and political rights. The failure to protect them from violence not only impairs the enjoyment of the right to security and integrity of person but in some instances the right to life.

⁵⁸ UN Declaration on Elimination of Violence against Women.

⁵⁹ UNHCR Code of Conduct. S.1

⁶⁰ UNHCR Code of Conduct. S.7

The state is required to adopt and implement appropriate measures to prohibit any exploitation and degradation of women.⁶¹ State parties shall adopt and implement appropriate measures to ensure the protection of every woman's right to respect for her dignity and protection of women from all forms of violence, particularly sexual and verbal abuse.⁶² Every woman shall be entitled to respect for her life and integrity and security of person. All forms of exploitation, cruel, inhuman, degrading punishment and treatment are prohibited.⁶³ State parties are required to take appropriate and effective measures to enact and enforce laws to prohibit all forms of violence against women including unwanted or forced sex whether the violence takes place in private or public, identify the causes and consequences of violence against women and take appropriate measures to prevent and eliminate such violence.

Refugee women are entitled to protection during armed conflicts. Most of them are usually victims of sexual exploitation and at times are engaged in forced marriages. State parties are required in accordance with the obligations incumbent upon them under international humanitarian law to protect civilians including women irrespective of the population to which they belong in the event of armed conflict.⁶⁴ State parties are required to protect asylum seeking women against all forms of violence, rape and other forms of sexual exploitation and to ensure that such acts are considered war crimes, crimes against humanity and their perpetrators are brought to justice before a competent criminal jurisdiction. State parties are required to take all necessary measures to ensure that no child especially girls under eighteen years of age take a direct part in hostilities and no child is recruited as a soldier.⁶⁵

The state has punished the perpetrators of violence against women to ensure the safety of most of the women and girls. This has been through imposing fines and sentencing the

⁶¹ Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa. Art.3 (3)

⁶² Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa. Art.3 (4)

⁶³ Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa. Art.4(2)

⁶⁴ Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa. Art.4(2)

⁶⁵ Protocol to the African Charter on Human and Peoples Rights on the Rights of Women in Africa. Art.11 (14).

perpetrators to imprisonment. Although, this has reduced on the exploitation of women, refugee women are still victims of sexual exploitation. Refugee men and women usually live in the same camps and because of that, many refugee men continue to abuse the women. Most of the camp guards and security officers are responsible for the exploitation of the women however some of them go unpunished and continue exploiting the women. Most of the refugee women do not have the proper documentations and because of that, most of them have been sexually harassed. Despite the fact that the state has ensured that women are protected from violence, majority of the refugee women still face exploitation. The right to security is therefore a human right that accrues to all human beings. Refugees are therefore entitled to enjoyment of the right as human being. Although the state has attempted to ensure the physical and legal security of refugees, it has not lived up to the expectations of human rights law.

CHAPTER 3

3.1. SECURITY OF REFUGEES

The protection of refugees encompasses their physical and legal security. Protecting the physical security entails securing their areas of residence or taking steps to prevent their safety from being jeopardized. It also requires that the living environment of refugees should be peaceful, humanitarian and civilian, free of violence, criminal activity and conducive to the realization of human dignity.⁶⁶ Physical safety extends to the time when refugees return home. The host state has an obligation to ensure that refugees are not subject to any risks while they return home. Physical safety includes the right to freedom from torture and ill treatment. It implies an end to violence, intimidation and the re-establishment of law enforcement agencies that are compliant with human rights law.⁶⁷

The legal security of refugees is best protected in an environment where the rule of law is respected and justly enforced. Any interventions which create such an environment will therefore promote the legal security of refugees.⁶⁸ For example, interventions which support law enforcement and judicial authorities may positively address the situation of lawlessness prevailing in the portions of the region. It also relates to the existence and effective implementation of legislation regulating inter-alia access to citizenship,

documentation, registration, civil status, housing, land or property rights and providing fair and effective restitution mechanisms.

Ensuring the physical and legal security of refugees is an essential part of refugee protection. Like all other people, refugees are entitled to an environment that supports their fundamental human rights to life, liberty and security of person. Unless the fundamental right of security of refugees is respected and safeguarded, other rights and benefits guaranteed by international and municipal law are of little use.

⁶⁶ Dureux J.F Preserving the Civilian Character of Refugee Camps. Lessons from the Kigoma Programme in Tanzania. Vol .9, No.3(November 2000)

⁶⁷ Zachary A Lomo. The Struggle for the Protection of Human Rights in Uganda.(1998)

⁶⁸ UNHCR Memorandum. Protection Guidelines Relating to Refugee Security. OPS, Kosovo, 3rd may (1999)

Security of person can also be seen as an expansion of rights based on prohibition of torture, cruel, inhuman and degrading punishment.⁶⁹

3.2. CAUSES OF INSECURITY IN THE SETTLEMENTS

When refugees flee armed conflict and cross the boarder, security ranks high among the priorities of those seeking asylum. The right to life and security of persons is among the key human rights refugees seek to protect. Threats may originate from a variety of actors such as the military and police, organized armed groups, criminal organizations, the local population or other refugees. It may take various forms such as physical and sexual violence, criminal acts, attacks on refugee camps, infiltration of combatants in refugee populated areas.

3.2.a. Threats to personal security from fellow refugees

The disruption and break down of social order that is commonly associated with coerced displacement has led to insecurity within the settlements. The situation is aggravated when refugees are confined in closed camps.⁷⁰ Psychological strain on refugee men due to inability to assume normal cultural, social and economic roles has led to aggressive behavior towards women. Many other aspects of refugee life have aggravated this including idleness, anger at loss of control and power, uncertainty about the future and frustration with living conditions. Alcohol and drug abuse has resulted into violent behavior within families and communities and such abuse is often linked to boredom, depression and stress.

Frustration with camp life has led to increased violence and insecurity within the settlements including rape and sexual exploitation of women and girls. Clashes between refugee groups of different national, ethnic, political or religious background also occur and distort the peace in the settlements.⁷¹ For example clashes between the Christians and the Muslims normally occur with results into distortion of peace in the settlements.

⁶⁹ Convention Against Torture.

⁷⁰ Black Richard, Putting Refugees in Camps. Forced migration review.vol 2(1998)

⁷¹ UN General Assembly Resolution.428 of 14th December.(1950)

3.2.b. Activities of the rebels

Rebel activities are greatly responsible for insecurity in the refugee camps. Insecurity impacts every aspect of people's lives. It hampers aid work, stunts development and creates a culture of fear and suspicion amongst people who have already been under considerable suffering. The Lords Resistance Army (LRA) led by Joseph Kony has been responsible for insecurity in the settlements. Since it began its fight against the government of Uganda, it has been responsible for abuses of human rights on a vast scale. The army is notorious for brutality of its methods including abduction of children who have been killed or forced to participate in the war.⁷² Rebel activity has created an atmosphere of fear and has a significant negative impact on the quality of life for the refugee population. The problem of LRA attacks is pervasive to the settlements and is adversely affecting the livelihoods of those living in the area. Refugees are therefore living in an area that is exposed and vulnerable to attack.

3.2.c. Threats to the safety of refugees emanating from the host community.

Refugees have been the object of ill treatment and resentment from the local population. Refugees living in urban areas also face serious problems of personal security particularly when they do not have proper documentation or where their presence is not officially authorized by the authorities. In such situations, refugees run the risk of arrest, detention, mistreatment or extortion by the police and also by criminal elements in the local population who know and take advantage of their vulnerable position. Refugee women without proper personal documentation are susceptible to sexual exploitation and abuse.⁷³ In many refugee situations, women are not routinely provided with documents showing that they are legally in the country. The male family member may have been designated as the head of the household and given the relevant documents. He may not be present to produce these documents before the authorities as and when required. Similarly refugee women

⁷² Lucy Horil. Refugees and the Security Situation in Adjumani District. Refugee Law Working paper No 2. (June 2001)

⁷³ Human Rights Watch, Hidden in Plain View. Refugees Living without Protection in Kampala and Nairobi, HRW, Newyork,(November 2002)

may not have individual registration cards or documents. This has led to increased harassment of many refugees and hence a threat to their security.

3.2.d. Security problems resulting from the association of refugees with armed resistance fighters

The close association either real or alleged between certain refugee groups and armed resistance movements has created a range of complex protection problems. This not only exposes the camps and settlements to the possibility of armed attack or sabotage emanating from within the country of origin but also subjects refugees to danger resulting from the proliferation of arms in the hands of different factions often with competing ideologies and political loyalties that they are prepared to impose by force.⁷⁴ This has led to the assassination of those refugees who refuse to join, abduction of women and children. Refugees willing to repatriate voluntarily have been subjected to intimidation or physical attack. In some cases, there have been threats and attempts against the lives of United Nations agents and relief agency personnel.⁷⁵

3.2.e. Threats to safety from Government personnel

Some of the most intractable problems affecting the personal security of refugees involve violence, intimidation and abuse of power on part of the military, police guards or other government personnel. Such problems usually arise when refugees are perceived as threats to the security or public order of the country and their presence though tolerated is viewed with misgivings or even hostility. In some cases, vigorous enforcement of closed camp policies has led to the shooting and killing of refugees at camp perimeters. In other cases, refugee settlements have been subject to periodic raids by the military looking for arms or political opponents. A somewhat different kind of threat to the personal security of refugees involves the frequent abuse of power by camp guards whose mistreatment of refugees

Executive Committee conclusion No 48(1987), Military or Armed attacks on Refugee Camps and Settlements. Third paragraph.

⁷⁵ Declaration on Territorial Asylum, adopted by the UN General Assembly on 14th December 1967,(Resolution 2312)

including women and girls does not reflect government policy but their own illicit self interest.⁷⁶

3.2.f. Infiltration of camps

The infiltration of the settlements and camps mainly by the Sudan peoples Liberation Army (SPLA) has greatly contributed to insecurity. The SPLA, a rebel group based in southern Sudan fighting the government of Sudan has posed a threat to the camps in the northern part of Uganda. Activities of the rebel group have led to recruitment of many refugees in the army, led to increased abductions of many refugees. The rebels have also looted refugee property and at times use the camps as bases for their activities. This has therefore put the life and integrity of refugees at risk and is contrary to the accepted notion that refugees are civilians and their camps and settlements have a strictly civilian and humanitarian nature.

3.3. LEGAL BASES FOR THE PROTECTION OF THE PERSONAL SECURITY OF REFUGEES

The very existence of international refugee law and the protection it confers is premised on the acceptance of its fundamentally neutral character by the international community and more specifically on the peaceful and humanitarian character of asylum.

The granting of asylum by a state is therefore not to be taken as an act of aggression. This is expressed in the preamble of the 1951 convention where the high contracting parties express the wish that all states recognizing the social and humanitarian nature of the problem of refugees will do everything within their power to prevent this problem from becoming a cause of tension between states.⁷⁷ The OAU convention reiterates the principle by stating that the grant of asylum to refugees is a peaceful and humanitarian act and shall not be regarded as an unfriendly act by any member state and stresses the need to make a

⁷⁶ Executive Committee Conclusion No 48(1987), Military or Armed attacks on Refugee Camps and Settlements. Third paragraph.

⁷⁷ Preamble of the 1951 Convention. first and second paragraphs

distinction between a refugee who seeks a peaceful and normal life and a person fleeing his country for the sole purpose of fomenting subversion from outside.⁷⁸

The 1951 convention is expressly premised upon the principle that human beings shall enjoy fundamental rights and freedoms without discrimination and on the United Nations endeavors to assure refugees the widest possible exercise of these fundamental rights and freedoms.⁷⁹

States have an obligation under international law to maintain the civilian character of settlements in order to safeguard the security of refugees. The OAU convention states that in so far as possible, refugees should be settled for reasons of security at a reasonable distance from the frontier of their country of origin.⁸⁰

The UNHCR has been instructed by the Executive committee to make appropriate arrangements with states of refuge on methods of protecting refugee camps and settlements and including whenever possible their location at a reasonable distance from the frontier of the country of origin.⁸¹ Further more, the UN Security Council in its resolution stress the need for the state and non state combatants to respect the civilian and humanitarian character of refugee camps and settlements and take into account the particular needs of women and girls.⁸²

The 1951 convention guarantees the same treatment for refugees as is accorded to aliens.⁸³ This therefore means that all rights enjoyed and granted to aliens should also be granted to refugees. Since security is a right enjoyed by aliens, the state is required to grant the same right to refugees.

State parties to the 1951 convention under take to cooperate with the office of the UNHCR in the exercise of its functions. Since providing international protection is first of these functions, this is relevant to the efforts of UNHCR to ensure personal security of refugees.

⁷⁸ OAU Convention Governing Specific Aspects of Refugee Problems in Africa. Art.2 (2)

⁷⁹ Preamble of the 1951 convention.

⁸⁰ OAU Convention Governing Specific Aspects of Refugee Problems in Africa. Art.2 (6)

⁸¹ Executive Committee Conclusion No (48) 1987 paragraph c

⁸² UN Security Council Resolution 1325(2000) Women, Peace and Security

⁸³ 1951 Convention Relating to the status of Refugees. Art.7 (1)

Concern for refugees actual security as well as formal legal rights and status is evident on the prohibition against returning a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened.⁸⁴ The UN Declaration on Territorial Asylum states that no person shall be subjected to measures such as rejection at the frontier, or if he has already entered the territory in which he seeks asylum, expulsion or compulsory return to any state where he may be subjected to persecution.⁸⁵ Similarly, the OAU convention states that no person shall be subjected by a member to measures such as rejection at the frontier, return or expulsion, which would compel him to return or remain in a territory where his life, physical integrity or liberty would be threatened.⁸⁶ The convention requires member states to use their best endeavors consistent with their respective legislations to receive refugees and to secure settlement of those who for well founded reasons are unable or unwilling to return to their country of origin or nationality.⁸⁷ This therefore means that security of refugees is fundamental and the state is under an obligation to ensure that places for settlement of the refugees are secure. The Refugee Act of Uganda also provides for the respect and protection of the rights of refugees as enshrined in the international and regional instruments. This therefore requires the state to ensure the safety of refugees. The law imposes an obligation on the state to protect the refugees and ensure that their lives are not at risk.

The law also requires the state to ensure the safety of refugees even at the time when they are willing to return to the country of origin. The state should ensure they are safe and not to be subjected to any risks. The law requires respect for the voluntary character of repatriation and no refugee should be repatriated against his will.⁸⁸ The country of asylum

⁸⁴ 1951 Convention Relating to the Status of Refugees. Art.33 (1)

⁸⁵ UN Declaration on Territorial Asylum. Art.3 (1)

⁸⁶ OAU Convention Governing Specific Aspects of Refugee problems in Africa. Art.2 (3)

⁸⁷ OAU Convention Governing Specific Aspects of Refugee problems in Africa. Art.2 (1)

⁸⁸ CM/Resolution 399(xxiv) Resolution on Voluntary Repatriation of African Refugees of the OAU Council of Ministers. Addis Ababa. Executive Committee Conclusion No 18 recognized the desirability for the UNHCR to verify the voluntary character of repatriation, arrange for safety guarantees in the country of origin, inform refugees of these guarantees and provide them with objective, accurate information regarding

in collaboration with the country of origin shall make adequate arrangements for the safe return of refugees who request repatriation.⁸⁹ The Refugee Act also requires the state to respect the voluntary character of repatriation and ensure the safe return of refugees to their countries of origin.⁹⁰ Security of refugees therefore extends to the time when they return to their home countries. It is also stated that refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every possible assistance by the country of asylum, the country of origin, voluntary agencies and intergovernmental organizations to facilitate their return. This means that assistance to refugees includes their safety while they return home. The state is therefore under an obligation to ensure the physical and legal security of refugees' from the time they enter the country till the time when they are ready to return to the country of origin.

The Security Council has specifically and repeatedly addressed the issue of creating a secure environment for civilians in times of conflict noting the vulnerability of refugee camps to infiltration by armed elements and the fact that such situations may constitute a threat to international peace and security.⁹¹ It has expressed its willingness to consider such situations and where necessary adopt appropriate steps including by providing support to the states concerned in this regard.⁹² The Security Council has recognized that conversely the provision of security to refugees and maintenance of the civilian and humanitarian character of refugee camps and settlements could contribute to the maintenance of international peace and security. The Secretary General in the context of his reports to the Security Council on the protection of civilians in armed conflicts has also specifically noted the importance of maintaining the humanitarian and civilian character of asylum.⁹³

conditions in the country of origin, monitor the situation of returnees in their home communities and assist in their reintegration.

⁸⁹ OAU Convention Governing Specific Aspects of Refugee problems in Africa. Art.5 (2)

⁹⁰ 2006 Refugee Act of Uganda. S.46(1)

⁹¹ Security council Resolution 1296 of April 2000

⁹² Ibid

⁹³ Security Council Resolution 1208 of 19th November 1998.

Safeguarding the personal security of refugees is implicit in the High Commissioners mandate of providing international protection.

This therefore means that the physical and legal security of refugees is enshrined in international and national instruments. The state is therefore under an obligation to ensure that the law is implemented. Refugees are therefore entitled to protection under the laws.

3.4. STATE IMPLEMENTATION OF THE LAW

The international protection of refugees is based not only upon the elaboration and acceptance by states of principles and norms for the benefit of refugees but also upon the effective implementation of those principles and norms by states in cooperation with UNHCR and the international community. Respect for refugees' fundamental rights is the first principle of international protection.

International and national laws expressly recognize the right to security of refugees and require the state to ensure protection of the right.

The state has ensured the protection of refugees by providing camp guards, police, and local defense units to guard the settlements and protect the refugees from activities of armed militants. These security guards are required to protect the refugees from all kinds of security threats and ensure the peaceful and humanitarian nature of asylum. The state requires the guards to make reports on any insecurity problems such that it can intervene and assist in the protection of the refugees. This has to some extent ensured the protection of refugees however the protection granted is inadequate. This is mainly because the camp guards, police, local defense units are few in number and therefore not able to protect all the settlements. The refugee camps in the northern part of the country are many and large and would therefore require more guards to ensure adequate protection. Since the guards are few in number, they can only protect few settlements and camps which therefore leave most of the settlements unprotected and vulnerable to attack. Most of the guards are not interested in their jobs because of the low pay and are reluctant to continue with their jobs. The low pay has therefore demoralized most of the guards and has affected their ability to protect the settlements and camps. This has thus led to insecurity in the camps and put the lives of many refugees at risk. This therefore means most of the settlements are not

protected because of the limited number of guards. The law requires the effective protection of all the settlements and camps and taking all the necessary steps to promote the peaceful and humanitarian character of asylum. The state by providing insufficient protection has not fully lived up to the expectations of the law.

The perpetrators of physical violence who at times are the guards, police, and local defense units are supposed to be punished for the crimes they commit. Though some of them are punished for the crimes they commit, most of them go unpunished. Those who are punished are most times required to pay fines. The Penal code Act requires punishment for those who have committed crimes such as rape, indecent assaults or any other violence against other individuals. Most of the perpetrators go unpunished and therefore many continue to abuse the lives of the refugees. Most of the refugees who are victims are also reluctant to report such cases because of fear of shame and at times are unable to remember the perpetrators of the crimes. Some of the refugees do not even know that they have the right to be protected from such atrocities. This has therefore continued to cause insecurity in most of the settlements and put the lives of many refugees at risk.

3.4.a. State implementation of Refugee Act

The law requires that once refugees arrive in the country, they immediately apply for status determination and undergo the whole process of registration so that they are granted the proper documentation to legally stay in the country. The state may at times take a long process to issue documentation to the refugees which creates a risky situation for them. Refugees with no documentation face the risk of detention, incurring fines or being harassed by security officials. Some of the refugees are not aware that once they arrive in the country, they are supposed to report for status determination and registration to acquire proper documentation. Most of them move without proper documentation and have therefore been subjected to a lot of harassment. Refugee women without proper personal documentation are susceptible to sexual exploitation and abuse. This has therefore threatened the security of most of the refugees. The state is under an obligation to inform refugees of the procedure they are supposed to undergo in order to acquire proper documentation and expected to keep reminding them. The fact that the whole process of

registration takes a long time has thus affected the security of refugees and hindered their right to freely move in the country.

3.4.b. State implementation of OAU Convention

The OAU Convention Governing Specific Aspects of Refugee Problems in Africa requires that for reasons of security, countries of asylum shall as far as possible; settle refugees at a reasonable distance from the frontier of their country of origin. The state has resettled refugees to the western part of the country for purposes of ensuring their safety and has established camps for them. This is mainly during the infiltration of the camps by armed militants. Although the state has resettled the refugees in the west, majority are usually moved slightly away from the boarder and are still in zones where they can easily be attacked. This has therefore continued to affect the lives of many refugees and making it hard for the refugees to enjoy the peaceful and humanitarian character of asylum.

The state is required under the OAU Convention to ensure the safe return of refugees to the country of origin. Those willing to return to their countries are to be protected till the time they arrive. The state may however lack sufficient resources to ensure the safe return of refugees. This therefore makes most of the refugees move without protection. They at times encounter militants on their way and are often subject to risk. Some of them are recruited into armies, others abducted and some are often killed especially those who try to resist. The law requires protection till the time refugees reach home. Reluctance on part of the state has therefore put their lives of refugees at risk.

The state has at times caused the return of refugees to their countries of origin. This is mainly due to the inability on part of the state to adequately provide for the refugees. This is contrary to the principle of non-refoulement where the state is required not to return refugees in any manner to the frontiers of the territories where their lives and freedoms would be threatened. Failure to provide the refugees with the basic resources causes many of the refugees to return to dangerous zones. Refugees are at times rejected at the frontier and therefore forced to return to their home countries. This has put the lives of many refugees at risk because many are faced with a lot of violence while they return. Most of the refugees who enter illegally are forced to return which is contrary to the principles laid down in the law. At times a penalty is imposed for those who enter the country illegally

which forces those who cannot pay to return and in the end are faced with various obstacles. This has thus caused a threat to the security of refugees and breach of the law by the state.

The security of refugees is therefore a fundamental right that is to be enjoyed by the refugees in the state. International and National law clearly provides for the right and requires the state to ensure that all refugees are protected within the territory. The state has to some extent ensured the security of refugees but has not effectively implemented the existing law. The problem is therefore not lack of a law but failure on part of the state to effectively implement the existing law.

CHAPTER 4

4.1. LOOPHOLES IN INTERNATIONAL AND NATIONAL LAWS GOVERNING THE PROTECTION OF REFUGEES

The 1951 convention is the one truly universal instrument setting out the baseline principles on which the international protection of refugees has to be built. It is the foundation and cornerstone of refugee protection and places the responsibility for protecting refugees squarely on host states. It is the land mark in the setting of standards for the treatment of refugees. It incorporates either directly or as an inevitable interpretation the fundamental concepts of the refugee protection regime. The refugee Convention forms the foundation of the modern international legal system designed to protect people who flee their countries because of persecution or conflict. It is widely credited with saving countless lives and ensuring means of escape for people facing imprisonment, torture, execution and other human rights abuses for reasons such as their political or religious beliefs, membership of a particular social group. It is the key instrument which establishes the rights of refugees and legal obligation of states. Despite the fact that the convention is the basis for refugee protection, it has some loopholes which have affected the responsibility of the state.

4.1.a. No express provision concerning the right to security

The 1951 Convention does not expressly provide for the right to security. It simply states in the preamble that human beings shall enjoy fundamental rights and freedoms without discrimination.⁹⁴ Failure to expressly provide a provision on the right to security affects the responsibility of the state. The state is under an obligation to ensure protection of rights that are enshrined in the law. The state can exonerate itself from responsibility basing on the fact that the right to security is not expressly stated in the law. It also becomes difficult to establish whether the right to security falls under the category of fundamental rights and freedoms. This is because the law does not define what fundamental rights and freedoms are. What is fundamental to one state may not be fundamental to another state. The fact that the right to security isn't expressly stated in the law gives discretion to the state to decide

⁹⁴ Preamble.1951 Convention Relating to the Status of Refugees.

whether to protect refugees or not. The state is responsible for breach of its obligations under the law therefore where an obligation is not stated in the law; the state ceases to be accountable. Lack of an express provision on the right to security is thus a loophole in the law and has affected the ability of the state to ensure physical and legal safety of refugees. Similarly, the OAU Convention which is the regional instrument for the protection of the rights of refugees does not expressly provide for the right to security. It simply calls on states to use their best endeavors consistent with respective legislations to receive refugees and to secure settlement for those who for well founded reasons are unwilling to return to their country of origin or nationality.⁹⁵ The law is silent on an express provision concerning the right to security which has in turn affected the responsibility of the state.

The Refugee Act has no express provision concerning the right to security. It simply states in the preamble that the state is under an obligation to respect fundamental rights and freedoms of all human beings.⁹⁶ This therefore leaves the discretion to the state to determine whether security is a fundamental right and has to be protected. The Act states that refugees have entitlements under the Geneva Conventions, OAU Convention and other Conventions or instruments relating to the rights or obligations of refugees to which Uganda is party. Such loopholes in international and national laws have thus affected the ability of the state to ensure the physical and legal security of refugees.

4.1.b. Security not defined in the laws

The 1951 Convention is silent on the meaning of security. Security is a fundamental right that accrues to refugees and is to be protected by the state. However, the fact that the law does not define security creates a lacuna in the law. Failure to define security of refugees makes it impossible to establish what safety of refugees entails. The state therefore though responsible for protecting refugees may not necessarily determine what kind of protection it is expected to give. Security is broad and encompasses various issues. Establishing the meaning of security makes it easier for the state to determine how and what is to be done to

⁹⁵ OAU Convention Governing Specific Aspects of Refugee problems in Africa. Art2(1)

⁹⁶ Preamble.2006 Refugee Act.

protect the refugees. Failure to establish the meaning and scope of security creates a loophole in the law and thus affects the responsibility of the state.

Similarly the OAU Convention and the Refugee Act do not define and establish the meaning of security. The meaning of security is fundamental in determining and establishing whether the right is not being respected by the state. Security can mean various things therefore failure to define security affects the responsibility of the state.

4.1.c. Laws silent on the procedure for status determination

There is no provision in the 1951 Convention concerning the status determination of refugees. The state is under an obligation to ensure that asylum seekers undergo the process of status determination. The state can therefore exercise its discretion in the grant of refugee status. Failure by the convention to provide a standard procedure for the recognition of refugees has posed a threat to the lives of many asylum seekers and has affected their physical and legal security. Some of the asylum seekers are denied status based on the will of the state. Asylum seekers without documentation have been victims of torture, arrests, detention. Women and girls without proper documentation have suffered from sexual exploitation. The fact that the convention does not provide for a universal procedure for the determination of the status of asylum seekers has affected the security of many asylum seekers.

The OAU Convention similarly is silent on the procedure for status determination of asylum seekers. This has made it difficult for many asylum seekers to acquire status and has thus affected the security of many asylum seekers.

The Refugee Act provides for a procedure that has to be followed by asylum seeker in order to be granted status. The procedure requires asylum seekers to make their applications within thirty days from the date of their entry. A refugee is to make a written application to the Eligibility Committee for the grant of refugee status within thirty days after the date of his/her entry into Uganda.⁹⁷ The thirty day deadline is very unrealistic and results in a large number of valid refugee claims being arbitrarily dismissed. Imposing such a deadline assumes that applicants will be able within that time frame to figure out what

⁹⁷ 2006 Refugee Act. Art19 (2).

procedures are to be followed, make a written application and deliver that application to the department of refugees. This has led to the disqualification of many asylum seekers who fail to submit applications within thirty days. This therefore implies lack of documentation which in turn causes a threat to the lives of many refugees. Many refugees arrive in Uganda sick and traumatized speaking languages that are not widely understood in Uganda, they enter from various points some of which do not have a refugee desk or UNHCR office. This means that the majority are unaware of the procedures that have to be followed. They need to first settle down before indulging in the whole procedure of status determination. Many of the refugees have not been able to make it within thirty days and as such, have been denied status which has affected their legal and physical security. Denial of refugee status means lack of documentation which can result into arrests, detention, harassments, beatings because the state considers those without the documentation a threat to the security of the state. Such gaps in the law have thus affected the physical and legal security of the refugees.

The requirement for a written application is also problematic since it assumes that asylum seekers are all educated, can write and read or will be able to receive some form of assistance in the preparation of their applications. Some asylum seekers may be illiterate and others require assistance to articulate their claim. In practice, there is very little assistance available for asylum applicants. This has thus left many asylum seekers unable to apply for status determination and hence a threat to their physical and legal security.

The Refugee Act provides for the issuance of temporary document valid for a period of ninety days from the date it is issued and thereafter renewable every two months until all rights connected with or incidental to applications for refugee status are exhausted.⁹⁸ The requirement for a three month initial period and a further renewal every three two months may prove to be tedious and rather unnecessary process both on part of the administration and the refugees. Some of the refugees tend to forget aspects of renewal every after two months which result into serious threats to their lives.

⁹⁸ 2006. Refugee Act. Art24 (1).

4.1.d. Principle of non rejection at the frontier is not recognized by the 1951 convention

The 1951 Convention recognizes the principle of non refoulement and requires states not to expel or return a refugee in any manner whatsoever to the frontiers of the territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.⁹⁹ Despite the recognition of the principle of non refoulement, the convention makes no mention of the principle of non rejection at the frontiers. This means that the convention only protects those persons who have already entered the countries of asylum and excludes those who are at borders and not yet in the country of asylum. Rejection at the frontier indirectly forces persons to return to their countries of origin where their lives and freedoms are at a risk. This therefore is contrary to the principle of non refoulement which is considered customary international law. Failure by the 1951 convention to recognize the aspect of non rejection at the frontier has put the lives of many asylum seekers at risk. This therefore shows a loophole in the convention which has affected the physical and legal security of refugees since the state protects only those refugees who are already in the country of asylum.

The Refugee Act similarly contradicts with the principle of non refoulement which has affected the physical and legal security of refugees. The Act states that on request from a country with which Uganda has signed an extradition treaty or an international tribunal, the minister may after consultation with the minister responsible for internal affairs, order the extradition of a refugee in accordance with the provisions of the applicable extradition law.

¹⁰⁰The principle of extradition is contrary to the principle of non refoulement. Extradition can lead to the return of a refugee to a country where his life or freedom would be threatened. Extradition of refugees has thus affected their security especially when they are returned to states where their lives and freedom are threatened. This therefore shows a gap in the law which contradicts the principle of non refoulement.

⁹⁹ 1951 Convention Relating to the Status of Refugees. Art33 (1).

¹⁰⁰ 2006. Refugee Act.S41(1).

The Refugee Act allows the minister after consultation with the minister responsible for internal affairs to expel any recognized refugee, if the minister considers the expulsion to be necessary or desirable in the interests of national security or public order.¹⁰¹ This section appears to be based on Art.32 1951 Convention that provides for expulsion in pursuance of a decision reached in accordance with due process of law. The section therefore does not consider the aspect of due process of law. Meaning that a refugee can be expelled without the due process of law. The minister is only required to give due consideration to any representation made by the expelled refugee or his/her representative or the representative of UNHCR. Such expulsion without due process of law is therefore contrary to the principle of non refoulement which requires prohibition from expulsion.

4.1.e. Aspect of reasonable distance is not clear in the OAU Convention

The OAU Convention states that for reasons of security, countries of asylum shall as far as possible settle refugees at a reasonable distance from the frontier of their country of origin.¹⁰² The Convention does not elaborate on what amounts to reasonable distance. This has to some extent affected the security of refugees. The state may move refugees away from the frontiers of their country of origin but settle them in a place where they can still be vulnerable to attack. This makes it discretionary for the state to determine what amounts to reasonable distance. It does not make sense to move refugees away to another place where they can still be vulnerable to attack. During the LRA rebel attacks for example, the state moved majority of the refugees to a reasonable distance away from the frontier of their country of origin but they were still in a zone vulnerable to attack. Moving refugees away from the frontier of their country of origin does not automatically guarantee security of the refugees. This makes it impossible to a portion responsibility to the state if it has acted in accordance with the law. The state is only responsible for breach of its obligations that are enshrined in the law therefore if the state has moved refugees to a reasonable distance away from the frontiers of the country of origin; it ceases to be accountable for any dangers that

¹⁰¹ 2006. Refugee Act.S40 (1).

¹⁰² OAU Convention Governing specific Aspects of Refugee Problems in Africa.Art.2(6)

accrue to the refugees. The aspect of reasonable distance is therefore not well explained which has in effect affected the physical and legal security of refugees.

4.1.f. The aspect of voluntary repatriation is not enshrined in the 1951 Convention

The 1951 Convention is silent on the aspect of voluntary repatriation which has in turn affected the physical and legal security of refugees. The voluntary character of repatriation is fundamental for purposes of ensuring that refugees are not forced to return to their countries of origin where their lives and freedom would be threatened. They are to be protected by the state from the time they are willing to leave till the time they reach their countries of origin. The fact that the 1951 Convention is silent on the aspect creates a problem for refugees who may at times be forced to leave. Some of the refugees may be willing to leave but are faced with security threats on their way back home. Majority fail to make it to their destination because of the various security problems that are encountered on their way back. The state is under an obligation to ensure the safety of refugees till the time when they reach their countries of origin. Failure by the 1951 Convention to recognize the principle of voluntary repatriation has thus affected the physical and legal security of refugees and hence creates a loophole in the law.

It can therefore be seen from the discussion above that responsibility of the state for the security of refugees has been affected by the loopholes in the law. The laws are silent on the right to security which is a fundamental right for all human beings. Where the laws are not clear on the aspects of security, it affects the responsibility of the state. For purposes of ensuring the protection of the physical and legal security of refugees by the state, there is need for amendment of the laws.

CHAPTER 5

5.1.RECCOMENDATIONS TO THE PROBLEM OF SECURITY OF REFUGEES

5.1.a. Improved law enforcement

When threats to the security of refugees are in form of banditry or other criminal activity, improved law enforcement by the authorities of the asylum country may be required. Measures to be adopted can include reinforcement of security patrol at the perimeter of refugee camps, more vigorous investigation and criminal prosecution of attacks on refugees.¹⁰³ People who have committed any crimes against refugees should undergo criminal prosecution for purposes of ensuring that justice is reached and discourage many from committing the same crimes against refugees. The state has to ensure that refugees who indulge in criminal activity should under go criminal prosecution. The government has at times adopted the policy of not interfering in intra refugee conflicts with the result that refugee settlements acquire a sort of extra territorial status with no enforcement of municipal law. In certain cases, non interference in criminal matters has left refugees particularly minorities or those out of favor with the leadership with no effective protection against violations of their basic rights.

Legal systems should adequately uphold the rights of women and girls under international human rights law including those relating to informal justice practices which violate the human rights of women and girls. Mechanisms for delivering protection should adequately monitor and reinforce women's rights. Asylum systems should be sensitive to the needs and claims of female asylum seekers.

There is need for recruiting and training security personnel specifically for the task of protecting refugees. Personnel should be trained on how to ensure effective security around the camps and protect the refugees from all threats to their security.¹⁰⁴ Where the security of refugees is violated by government personnel such as camp guards, deterrence through improved law enforcement is more effective if it includes criminal prosecution as well as

¹⁰³ UNHCR, The personal Security of Refugees. (5th may 1993),EC/1993/SCP/CRP.3

¹⁰⁴ I bid.

internal disciplinary procedures.¹⁰⁵ A serious problem encountered by UNHCR is the reluctance of the authorities to punish the abuse of refugees by government personnel. While questions are often raised about the reliability of the refugees' complaints, substantiated incidents of violence to refugees including murder and rape have resulted only in administrative transfers and reprimands. Strong leadership and political will is required to enforce the law in such cases.

In areas of wide spread lawlessness and violence, a multifaceted approach should be adopted which would include increased UNHCR presence, enlarged and improved police patrols of both refugee areas and supply routes, reorganized housing arrangements in camps to reduce the exposure of women to attacks, the mobilization of refugees themselves for self defense and improved liaison between refugee leadership and the police. Improved security for UNHCR and implementing agency staff is also envisaged.¹⁰⁶

5.1.b. Improvements in refugee camp location, design and administration

Location of refugee camps in safe zones is fundamental for ensuring the safety of refugees. Safe areas or more defensible sites is a measure that should be considered by the authorities in consultation with UNHCR preferably before expense is incurred in building a refugee camp in an unsafe location.¹⁰⁷ The state should therefore ensure that the regions where the camps are established are safe and not vulnerable to attacks. There is need for assessment of the stability of the area before the establishment of refugee camps. For purposes of ensuring security incase of attacks, refugee section leaders should be supplied with police whistles to call for help. This can help minimize on the attacks in the settlements. Lighting of public areas and refugee camps is vital for purposes of ensuring the protection of those who move in the nights. As the guidelines on the protection of refugee women point out, matters such as the location of water sources and latrines can have an impact on the safety of refugees particularly women and girls.¹⁰⁸ Water sources and latrines should be located in

¹⁰⁵ Ibid.

¹⁰⁶ UNHCR, Operational Protection in Camps and Settlements. A Reference Guide of Good Practices in the Protection of Refugees and Other Persons of Concern, (June 2006)

¹⁰⁷ UNHCR, The Personal Security of Refugees. (5th may 1993),EC/1993/SCP/CRP.3

¹⁰⁸ UNHCR, Sexual Violence Against Refugees: Guidelines On Prevention and Response.(8th march 1995)

areas that are accessible and protected zones to avoid situations where women and girls can be attacked or raped. The water sources need to be close to the refugee camps. The best solution to the security problem inherent in closed camps is to avoid them but where this is impossible, special attention is required to the psychological and social environment resulting from confinement.

The involvement of refugee community particularly the women in the organization and administration of refugee camps and settlements are important for security as well as other reasons.¹⁰⁹

5.1.c. Resolving security threats from the refugees' country of origin

Attacks on refugees across international borders pose complex political problems and require a comprehensive approach which may begin with preventive diplomacy. Where organized armed forces are involved, such attacks may be seen as a threat to international peace and security calling for the involvement of the political organs of the UN or relevant regional bodies. Military attacks directed to refugees are violations of international humanitarian law.¹¹⁰ Even in cases where essentially criminal elements are involved, attacks across the borders nonetheless engage the responsibility of the country of origin for the maintenance of law and order within its boundaries. Depending on the size and nature of the threat, the most practical remedy may be reinforced border patrol by the country of asylum. It may also be necessary to ensure that refugees or persons associated with them do not provoke such attacks through their own cross border activities. One way to accomplish this is to comply with the prescriptions of the OAU Convention that refugee camps should be located at a reasonable distance from the frontier and that refugees must not engage in subversive activities towards their country of origin. Where attacks on individual refugees are involved, the appropriate responses may be diplomatic and legal. In many cases, there is a link between threats to refugees from their own country and the underlying causes of refugee flight. The possibility of resolving those causes and thereby permitting a solution to the refugee problem through voluntary repatriation is kept under

¹⁰⁹ UNHCR, Guidelines on the Protection of Refugee Women, (July 1991)

¹¹⁰ UNHCR, Protection of Refugees in Non International Armed Conflicts, (12th August 1989)

constant review by the high commissioner and will normally be a part of any comprehensive strategy adopted.

5.1.d. Guiding and training of Government personnel

Clear government policies and directives regarding the reception and treatment of asylum applicants and refugees are of vital importance in ensuring their safety. Such directives must reach and be implemented by the government personnel in direct contact with refugees, including boarder guards, immigration officials, police, the military and administrators.¹¹¹ Refugees must always receive a warm welcome while crossing the boarders and should then be informed of what they are expected to do on arrival. For example they ought to be informed of the procedures and formalities for status determination. They need to be guided on where the refugee camps are located and told how they are expected to survive. This helps to ensure the safety of refugees and avoids situations of confusion. It can also ensure that refugees undergo status determination within a reasonable time to avoid situations of arrest and detention due to lack of proper documentation. Government personnel should be trained on how they should receive refugees and how to educate them on the various measures that have to be under taken. Clear instructions should be issued to civilians, police and military authorities that refugees should not be arbitrary arrested or detained without justifiable reasons. Reports of arbitrary arrests, detention and ill treatment should be investigated and ensure that those responsible are brought to justice.

Periodic visits by UNHCR and government officials preferably jointly to boarder points and camps can help raise awareness of issues involved and uncover problems with implementation. Allow UNHCR and other international humanitarian agencies immediate and unlimited access to the boarder areas including informal or formal detention facilities and allow them to monitor any screening procedures established to identify those deemed a security threat in order to establish a fair and effective process to separate them from civilian refugees. Such regular visits helps establish the problems being faced by refugees and solutions can easily be reached. Government officials should also check on the

¹¹¹ UNHCR, The Personal Security of Refugees. (5th may 1993),EC/1993/SCP/CRP.3

conditions of refugees periodically and assess whether they are facing any security difficulties. This can help ensure the physical and legal security of refugees. Training programs, seminars and workshops should be organized for government officials and implementing agency covering practical questions relating to the personal security and issues of human rights. This can create awareness and help ensure the safety of refugees.

5.1.e. Base repatriation programs on human rights standards

The internationally agreed guiding principle on repatriation states that the voluntary and individual character of repatriation and the need for it to be carried out under conditions of absolute safety should always be respected. Any decision on repatriation should always be based on an independent, impartial and objective assessment of the human rights situation in the country of return to establish whether conditions are durably safe. The principle of non refoulement must never be violated by repatriation schemes. Repatriation programs should include human rights guarantees at all stages of the return. Repatriation should not be imposed until there is a fundamental and lasting change in the country of return. The human rights situation in the country of return should be subject to an independent and impartial assessment based on publicly available information before during and after repatriation. International human rights bodies, thematic mechanisms and country rapporteurs should have an active role in this assessment. The international community including governments, international organizations and non governmental organizations should immediately agree on how to provide an independent human rights assessment and monitoring system for repatriation programs. Efforts should be made to ensure the involvement of a representative cross section of the refugee in assessing when return is possible. When refugees are repatriating spontaneously rather than as part of an organized program, government, UNHCR and other agencies should ensure that refugees are not put under pressure to return and they have access to an impartial information about conditions in their country of origin and that measures are taken to ensure safety of returning refugees.

5.1.f. Longer deadline be imposed for filing applications

The refugee act requires a refugee to make a written application to the eligibility committee for the grant of refugee status within thirty days after the date of his/her entry into Uganda.¹¹²

I recommend that a longer deadline be imposed and exception be granted for late filers if just cause is demonstrated. Given the requirement of a written application, I recommend that either a provision be made for assistance in the preparation of asylum claims or it should be made clear that applicants may furnish additional information during consideration of their claims. Assistance could be provided within the department of refugees or the offices of other authorized officers/ or the department of refugees may liaise with human rights NGOS to provide this service. Refugees who cannot write applications in English should be assisted.

S.24 (1) (a) on the aspect of temporal documentation should be amended. It states that an applicant will be issued with a temporal documentation valid for a period of ninety days and thereafter the document is renewable every after two months until all the rights connected with or incidental to applications for refugee status are exhausted.¹¹³ I recommend that asylum applicants be given temporal documentation that covers at least nine months the appropriate ideal time provided in the act for the determination of asylum applications. After this period, there could be a period for renewal every two or three months incase of an appeal or time allowed for a rejected asylum seeker to prepare and leave the country.

5.1.g. Expulsion should be after due process of law

The refugee act requires the minister after consultation with the minister responsible for internal affairs to expel any recognized refugee if the minister considers the expulsion to be necessary or desirable in the interests of national security or public order.¹¹⁴ I recommend that the section be significantly altered to reflect art 32 of the 1951 convention to include due process of law. Expulsion should be after the due process of law has been conducted. I

¹¹² 2006 Refugee Act. Art.19 (2).

¹¹³ 2006 Refugee Act.

¹¹⁴ 2006 Refugee Act. S40(1).

recommend that the following be expressly provided for, adequate notice of expulsion proceedings, the refugee eligibility committee handles expulsion proceedings with a provision for appeal to the appeals board and the courts of law, provision for a refugee to be heard in these proceedings and to obtain legal assistance, the expelled refugee is given sufficient time to remain in the country while seeking legal admission to another country. The above will be subject to compelling reasons of national security.

S.41(1) of the act states that on request from a country which Uganda has signed an extradition treaty or an international tribunal, the minister may after consultation with the minister responsible for internal affairs order for extradition of a refugee in accordance with the provisions of the applicable extradition law. I recommend that the act specifically state that due regard be given to the principle of non refoulement in extradition proceedings. The principle of non refoulement is customary international law and is to be respected by all states. Breach of the principle violates the right to security of refugees. Therefore before a refugee is extradited back, the state must ensure that his life and freedom are not to be threatened.

5.1.h. Maintaining the civilian and humanitarian character of refugee camps

The presence of armed resistant fighters in or near refugee camps or settlements involves not only serious security problems but also in most cases, problems of a political nature. In many cases however, resistance movements have had the support, tacit and overt of the host country and other members of the international community or of the refugees themselves. Resistance movements should not be conducted from a refugee camp or vicinity. UNHCR and the state should obtain formal agreements for a clear separation between resistance fighters and refugees as well as for banning weapons from refugee camps and settlements. The purely civilian and humanitarian character of refugee settlements should be maintained at all times and the state should ensure that during conflicts, refugees are protected like any other civilians as long as they are not involved in the conflicts. Although the exclusively civilian and humanitarian character of refugee camps and settlements is widely accepted, the political will to uphold it in practice has not always been apparent.

5.1.i. Need for security to be defined and be expressly provided for in the conventions

I recommend that security is defined in order for the state to establish its scope of responsibility. Security is a broad term and can be used to mean several things. The conventions should explain the meaning of security and what constitutes security. There is also need for the right to security to be expressly provided for in the conventions. The conventions simply require the state to ensure the maintenance of fundamental rights and freedoms of all human beings but don't elaborate on whether security is a fundamental right. This means that it is up to the state to establish and determine whether security is a fundamental right and therefore has to be protected. Fundamental rights and freedoms should also be defined so that the state can determine whether the security of refugees is a fundamental right. The right to security may not appear fundamental to the state and this makes it difficult for the state to be held responsible for violation of the right. If the right to security is fundamental to all human beings, then it should expressly be stated in the convention.

5.1.j. Aspect of reasonable distance in the OAU Convention should be made clear

The OAU Convention states that for reasons of security, countries of asylum shall as far as possible settle refugees at a reasonable distance from the frontier of their country of origin.¹¹⁵ The convention needs to elaborate on what amounts to reasonable distance because the state may move refugees away from the frontiers of their country of origin but still in an area vulnerable to attack. I recommend that the provision be amended and require the state to move refugees away from the frontiers to a place where they are safe and not vulnerable to attack. This therefore will require the state to ensure that refugees are moved to a reasonable distance but to a place where they are safe. This will in turn help to ensure that refugees are safe and protected by the state. This therefore can help ensure the physical and legal security of refugees.

¹¹⁵ OAU Convention Governing specific Aspects of Refugee Problems in Africa. Art.2(6)

5.1.k. The 1951 Convention should include the principle of non rejection at the frontier

The 1951 Convention recognizes the principle of non refoulement and requires the state to ensure that no one is expelled or returned in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened¹¹⁶ however the convention makes no mention of the principle of non rejection at the frontier. Some asylum seekers are usually denied entry at the borders which forces them to return to their countries of origin. Failure to allow some asylum seekers entry in the country of asylum indirectly contradicts the principle of non refoulement because it forces the asylum seekers to return to their country where their lives and freedom are bound to be violated. Asylum seekers should be allowed access into the country of asylum and later undergo the process of status determination so that the state can later establish which asylum seekers are bound to settle in the country. This in essence means that the convention only protects refugees who are already in the country of asylum and those who have not crossed the borders are not protected. Denial of entry contradicts with the right to seek and enjoy asylum in other countries. Every one has a right to seek and enjoy asylum in other countries from persecution and therefore persons seeking asylum should not be denied entry at the borders. For purposes of ensuring the respect for the principle of non refoulement, the convention needs to incorporate the principle of non rejection at the frontiers to ensure the physical and legal security of refugees by the state.

5.1.l. Need for a law on determining the status of asylum seekers

The 1951 and OAU Conventions have no provisions for determining the status of asylum seekers which has in turn caused security problems for many asylum seekers. The grant of refugee status is based on the state in cooperation with UNHCR. There is no standard procedure to be followed which gives discretion to the state to determine the grant of status some of the asylum seekers may be denied status without valid reasons. This in turn forces many to move without proper documentation and in turn they are arrested, harassed and tortured. Women and girls suffer from sexual exploitation and abuse which is a violation of

¹¹⁶ 1951 Convention Relating to the status of refugees. Art33 (1).

the physical and legal security of the refugees. I recommend that the conventions introduce a procedure for determining the status of refugees which is universal and applicable by all states. This will ensure that a set standard has to be followed and denial of status will only arise if the asylum seeker does not have the set requirements. A standard procedure also makes it easier for the state and fastens the whole process of status determination. It also helps promote transparency in the system involving the grant of refugee status.

5.1.m. Provision should be included in the 1951 convention for the protection of refugees during armed conflicts

There is no provision in the 1951 convention for the protection of refugees during armed conflicts. Many refugees have become victims during armed conflicts and they are usually forced to participate in the conflicts. Those who try to hesitate are normally killed. Their properties are usually attacked and destroyed during such conflicts. Most of the settlements and camps are close to the borders and can easily be destroyed during conflicts. Children are abducted and forced to participate in such hostilities. The state should take appropriate measures to prevent the unlawful recruitment or use of children by armed forces or groups and work towards the unconditional release from armed forces of all children recruited or used unlawfully by armed forces and their protection and reintegration. The state and UNHCR should put in place modalities as appropriate for early and continuous identification of children at heightened risk. Risk factors that put children in a situation of heightened risk can include both risks in the wider protection environment and risks resulting from individual circumstances taking into account cumulative effects of being exposed to several factors such as wider environmental risk factors including but not limited to an insecure environment, lack of access to child sensitive asylum procedures. The state should promote the establishment and implementation of child protection systems in accordance with the international obligation of the state and to which children under their jurisdiction should have non discriminatory access, the support provided by UNHCR and other relevant agencies in helping states fulfill their obligations should implement and strengthen the national child protection system in areas where gaps exist and be delivered in a spirit of partnership by building on each actors comparative advantages to reinforce the beneficial impact on the protection of children. The state should ensure that women and

girls are protected from sexual exploitation and violence during conflicts .The state should make all effort to provide a secure environment including through selecting safe locations for camps and settlements as close to local facilities as possible, undertaking child and gender sensitive protection based site planning. Since the 1951 convention is the universal instrument for the protection of refugees, i recommend that a provision be included for the protection of refugees during armed conflicts since they are civilians and not involved in such hostilities.

CONCLUSION

The notion of asylum is based upon the principle that people should be able to leave their own countries when they are confronted with serious threats to their life and liberty and they should henceforth enjoy protection and security in the state which has admitted them to its territory.

Safeguarding the basic human rights of refugees including their personal security is fundamental to international protection. Since the state has the duty to respect and ensure the rights of individuals within their territory or subject to their jurisdiction, responsibility for ensuring the safety of refugees is first of all to the governments of the country of asylum in cooperation with UNHCR and other relevant organizations. The security of refugees also requires respect by the countries of origin for the peaceful and humanitarian character of the grant of asylum and for the territorial integrity of the country of asylum. To discharge its responsibilities for ensuring the safety of refugees, the state requires the support of the international community and the cooperation of refugees themselves. The security of refugees is a fundamental right that is enshrined in International and National laws and accrues to all human beings. Uganda has an obligation to ensure the implementation of existing law to fulfill its commitment as a friend to refugees. Although, the state has tried to ensure the physical and legal security of refugees, it has not effectively implemented the existing. There is inadequacy on part of the state in the implementation of the existing law which has affected the physical and legal security of refugees.

Given the circumstances, Uganda has been relatively effective at accommodating refugees. However, there are numerous problems associated with the socio political and humanitarian conditions under which refugees are currently living within Uganda. Refugees are in the most unstable regions of the country and live in a state of constant fear due to inadequacy of protection within the settlements. At the same time, they suffer from long term implications of living with short term solutions. There is a backlog of issues which need addressing so that the state can fulfill its obligations under international and national law. It is worth noting that the loopholes in the laws have also affected the responsibility of the state. There is need for amendment of the laws on security for the state to effectively ensure the safety of refugees.

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